

Exhibit B

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1 D. O'Sullivan
 2 A. I'm the president.
 3 Q. How long have you been the president?
 4 A. Since its beginning.
 5 Q. Which is when?
 6 A. '87.
 7 Q. Are you also a -- do you have an
 8 ownership interest in Navillus?
 9 A. I do.
 10 Q. What percentage?
 11 A. 50.
 12 Q. Is there one person that has the other
 13 50?
 14 A. That's correct.
 15 Q. Who is that?
 16 A. Kevin O'Sullivan.
 17 Q. Have you each been 50-50 owners since
 18 1987?
 19 A. No.
 20 Q. When did that start, when you each
 21 owned half?
 22 A. Approximately 1999.
 23 Q. I understand Kevin resigned as an
 24 officer at some point last year, but before that,
 25 what office did he hold in the company?

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1 D. O'Sullivan
 2 MR. STURM: Objection to form.
 3 A. Vice president.
 4 MR. STURM: Can we go off the record?
 5 MR. PETERSON: Yes.
 6 (Discussion off the record.)
 7 MR. STURM: During the off-the-record
 8 discussion the parties agreed to a
 9 stipulation concerning waiver of objections
 10 concerning form, the parties stipulate that
 11 all objections as to form are preserved, and
 12 therefore we hope that the deposition will
 13 go quicker.
 14 Q. When you both were officers of --
 15 first, when did Kevin cease being an officer of
 16 Navillus?
 17 A. Middle of last year, I'm not sure of
 18 the date.
 19 Q. Before that time, when you were both
 20 still officers, were there any other officers of
 21 Navillus? In other words, you were president, he
 22 was vice president, was there anyone else who held
 23 an office at Navillus?
 24 A. There may be a director for scaffold.
 25 Q. Director for scaffold?

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1 D. O'Sullivan
 2 A. Can I --
 3 Q. If you don't know --
 4 A. Yes, I don't know.
 5 Q. Who would that individual be, even if
 6 you are not sure that he or she held that actual
 7 office?
 8 A. Not an office, it would be a director.
 9 Q. A director. Who is that person?
 10 A. I can't remember the name, it is just
 11 recently.
 12 Q. When Kevin was the vice president and
 13 you were the president, what functions and duties
 14 did Kevin perform at Navillus?
 15 A. He maybe looked after the tile and
 16 stone division of Navillus.
 17 Q. What about you, what did you look
 18 after?
 19 A. Everybody was answerable to me.
 20 Q. Including Kevin?
 21 A. Excluding Kevin.
 22 Q. Did he participate in decisions about
 23 matters that were outside the tile and stone
 24 division also?
 25 A. Yes.

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1 D. O'Sullivan
 2 Q. Other than tile and stone, what was
 3 Navillus doing at the time? What kinds of jobs,
 4 what kind of work?
 5 A. Concrete work, masonry work, for the
 6 most part.
 7 Q. Who was responsible for overseeing
 8 that?
 9 A. I was.
 10 Q. Do you have any interest in Times
 11 Square Construction?
 12 A. Yes.
 13 Q. What is your interest in Times Square?
 14 A. I'm an owner.
 15 Q. What percentage?
 16 A. 50 percent.
 17 Q. Does Kevin own the other 50 percent?
 18 A. That's correct.
 19 Q. When was Times Square Construction
 20 created?
 21 A. Again, approximately the early part of
 22 2006.
 23 Q. Have you and Kevin been co-owners
 24 since then?
 25 A. Yes.

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1 D. O'Sullivan
 2 Q. Has anyone else had an ownership
 3 interest in Times Square other than the two of
 4 you?
 5 A. No.
 6 Q. Do you hold an office in Times Square?
 7 A. No.
 8 Q. Do you know why Kevin resigned his
 9 office at Navillus?
 10 A. No.
 11 Q. Did he say anything to you about why
 12 he was resigning?
 13 A. We talked about getting into
 14 development some while back. We agreed after
 15 looking at some properties, we agreed that he
 16 would, Kevin would run that division, I would run
 17 the Navillus division.
 18 Q. You mentioned division. Division --
 19 A. Put another word, that company, or...
 20 Q. There is also an entity called Eighth
 21 and 48th Street Development Corp.?
 22 A. Yes.
 23 Q. What is the function of that company?
 24 A. The owner -- part owners of the 785
 25 project.

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1 D. O'Sullivan
 2 Q. 785 Eighth Avenue?
 3 A. Building, yes.
 4 Q. Do you have an interest in that
 5 entity, at Eighth and 48th?
 6 A. Yes.
 7 Q. What is your interest?
 8 A. 50 percent owner.
 9 Q. Is Kevin the other 50 percent owner?
 10 A. Of Eighth and 48th, yes.
 11 Q. When was that entity formed, speaking
 12 about Eighth and 48th?
 13 A. I'm not sure.
 14 Q. Was it before or after Times Square
 15 was set up?
 16 A. I'm not sure.
 17 Q. Do you have an office and do you hold
 18 an office in Eighth and 48th?
 19 A. An office as in?
 20 Q. As in being an officer of, not do you
 21 have a desk and chair. Are you president, vice
 22 president, director, anything along those lines?
 23 A. I'm not sure to be honest, I'm not
 24 sure. Only two of us, I presume I do.
 25 Q. Similarly because there is only two of

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1 D. O'Sullivan
 2 you, you presume is it true to say you presume
 3 Kevin holds an office in Eighth and 48th?
 4 A. Again, I don't know.
 5 Q. Do you know if anyone else is an
 6 officer of Eighth and 48th?
 7 A. I wouldn't think so.
 8 Q. You mentioned with respect to
 9 Navillus, you mentioned the tile division and also
 10 concrete and masonry. Since it was founded, has
 11 Navillus performed any other kind of work beside
 12 tile, concrete and masonry?
 13 A. Trades that would be included, some
 14 carpentry, some plaster, obviously some welding if
 15 we came across it, anything associated with that
 16 work.
 17 Q. That work being concrete, masonry --
 18 A. Concrete, masonry work, tile work,
 19 plaster work, that type of work, carpentry work.
 20 Q. Has Navillus functioned as the general
 21 contractor in any projects?
 22 A. Yes.
 23 Q. Can you give us an estimate of how
 24 many projects Navillus has functioned as a general
 25 contractor on?

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1 D. O'Sullivan
 2 A. Ten.
 3 Q. Same question with respect to
 4 construction manager, has Navillus functioned as a
 5 construction manager on any of the projects?
 6 A. No.
 7 Q. Do you know the most -- approximately
 8 when the most recent project on which Navillus was
 9 a general contractor took place?
 10 A. Not the most recent one, but most
 11 recent ones would be schools, a bunch of schools
 12 come together.
 13 Q. Would that have been in the past year
 14 or two?
 15 A. Yes.
 16 Q. I'd like to ask you some questions
 17 about the Eighth Avenue job, 785 Eighth Avenue.
 18 When did Navillus first become involved in work at
 19 that address, 785 Eighth Avenue?
 20 A. Again, approximately November, 2006,
 21 2007.
 22 Q. Did Navillus have anything to do with
 23 the demolition at that address?
 24 A. No.
 25 Q. Who is the owner of the job site?

3 (Pages 9 to 12)

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1 D. O'Sullivan
 2 A. No.
 3 Q. How is the name Times Square arrived
 4 at?
 5 A. I have no idea.
 6 Q. It doesn't have anything to do with
 7 the proximity of this job site to Times Square?
 8 A. Your guess is as good as mine.
 9 Q. Did you speak with your brother about
 10 that?
 11 A. No.
 12 Q. You are a 50 percent owner?
 13 A. Correct.
 14 Q. Did you have anything to do with the
 15 decision about the name of the company?
 16 A. No, no.
 17 Q. When did you and your brother decide
 18 to form Times Square?
 19 A. Again, late 2005, early 2006, we
 20 decided to form a company to build projects on our
 21 own account.
 22 Q. Did you, when doing that, did you and
 23 Kevin discuss what role Navillus would play in
 24 projects that Times Square would be building?
 25 A. No.

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1 D. O'Sullivan
 2 Q. How many projects has Times Square
 3 been involved in building?
 4 A. Again, I just know of two.
 5 Q. You are a 50 percent owner, is it
 6 possible they are building projects you are not
 7 aware of?
 8 A. It is quite possible. I'm not
 9 involved in every day running of the company.
 10 Q. The two are the Eighth Avenue project
 11 and a project on 34th Street; correct?
 12 A. Correct.
 13 Q. Navillus is performing work at both of
 14 those job sites; correct?
 15 A. Correct.
 16 Q. Now tell me what work Navillus is
 17 performing at Eighth Avenue.
 18 A. Superstructure concrete, and masonry
 19 work.
 20 Q. How about 34th Street, what work is
 21 Navillus performing there?
 22 A. Superstructure concrete, and we are
 23 negotiating the masonry contract.
 24 Q. You are negotiating what?
 25 A. Masonry contract.

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1 D. O'Sullivan
 2 Q. Who are you negotiating with, with
 3 respect to the masonry contract at 34th Street?
 4 A. My project manager is negotiating with
 5 their project manager, I'm not sure who he is
 6 negotiating with, not sure what specific person
 7 there I'm negotiating with, the name of that
 8 person.
 9 Q. You would be the person who would
 10 decide whether Navillus would do the work at the
 11 agreed upon pricing; correct?
 12 A. Final decision would be mine.
 13 Q. The final decision on Times Square's
 14 part would be Kevin's; correct?
 15 A. I don't know.
 16 Q. Have you talked with Kevin about the
 17 34th Street project?
 18 A. In what capacity?
 19 Q. Any capacity?
 20 A. Obviously we talked about we bought
 21 the property.
 22 Q. So you are co-owners of that property
 23 also?
 24 A. Yes.
 25 Q. Do you own, you, that is to say, you

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1 D. O'Sullivan
 2 or whatever entity holds title to the property, do
 3 you own a hundred percent of it, or a percentage
 4 of it?
 5 A. A percentage of it.
 6 Q. 50 percent?
 7 A. No.
 8 Q. What percent?
 9 A. 30 percent, sorry, correction, you say
 10 you --
 11 Q. I'll break it down. Did you form an
 12 entity to take an ownership interest in the 34th
 13 Street?
 14 A. Yes.
 15 Q. What is the name of that entity?
 16 A. I don't know the exact name.
 17 Q. Are you and your brother co-owners of
 18 it?
 19 A. Yes.
 20 Q. Do you and your brother each own half?
 21 A. Yes.
 22 Q. That entity, whatever the name of it
 23 is, is it that entity which owns 30 percent?
 24 A. Correct.
 25 Q. Who owns the other 70 percent?

5 (Pages 17 to 20)

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1 D. O'Sullivan
 2 set the schedule.
 3 Q. You were a member of the development
 4 team?
 5 A. No, I'm not. There is -- let me be
 6 clear on this -- our partners have all the
 7 responsibility of the development team with
 8 reference to 785 or development duties I guess you
 9 would call it.
 10 Q. What do you mean by development
 11 duties?
 12 A. Requisitions, schedules, financing,
 13 those type things.
 14 Q. Who decided that Navillus would do
 15 work at Eighth Avenue?
 16 A. We were hired by Times Square.
 17 Q. Who did you talk with about Navillus
 18 being hired to do work at Eighth Avenue?
 19 A. I don't know if I actually talked to
 20 anyone. Again, I'm not sure, I don't get involved
 21 in a lot of details with jobs, it could very well
 22 be my project manager.
 23 Q. Who is that?
 24 A. For this particular job at the time
 25 was Gerry Cormican.

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1 D. O'Sullivan
 2 Q. Did you speak with Gerry about the
 3 job?
 4 A. Yes.
 5 Q. What did he tell you about any
 6 conversations he had with Times Square about
 7 Navillus working -- getting the work at Eighth
 8 Avenue?
 9 A. It is a broad question.
 10 Q. Yes.
 11 A. I talk to Gerry every day about jobs.
 12 Q. I don't mean about the job, every
 13 aspect of the job. What did he tell you about his
 14 conversations with Times Square relating to
 15 Navillus getting the work in the first place?
 16 A. That, I don't remember.
 17 Q. Do you know when it was decided that
 18 Navillus would do work at Eighth Avenue?
 19 A. Again, summer of 2006.
 20 Q. You said that the reason for the cost
 21 plus contracts that Navillus had for Eighth Avenue
 22 was that the drawings were not complete. When, to
 23 your knowledge, were the drawings complete?
 24 A. I didn't say that was the reason. I
 25 said I couldn't give a firm bid.

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1 D. O'Sullivan
 2 Q. Okay.
 3 A. On the project, without completed
 4 drawings.
 5 Q. Do you know the reason why Times
 6 Square agreed to a cost plus contract then, if it
 7 wasn't the drawings?
 8 A. I don't know, but I would presume you
 9 can't get a firm bid.
 10 Q. I'd like to show you a document.
 11 MR. PETERSON: I ask the court
 12 reporter to mark this as Donal O'Sullivan 1.
 13 (D. O'Sullivan Exhibit 1, conceptual
 14 estimate summary, marked for identification,
 15 as of this date.)
 16 Q. I'll let you take a look at it. For
 17 the record, the heading of this document is
 18 Navillus Contracting, 785 Eighth Avenue conceptual
 19 estimate summary, and it says printed, 2/28/2006?
 20 MS. PITTAWAY: I believe that this is
 21 an incomplete document. I believe there was
 22 a contract attached to this.
 23 MR. PETERSON: Documents were not
 24 produced to us in that form, just a big --
 25 MS. PITTAWAY: I believe it is an

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1 D. O'Sullivan
 2 incomplete document and there was a
 3 contract, but I'm just stating that for the
 4 record.
 5 Q. This was a document prepared by
 6 Navillus contracting; correct?
 7 MR. STURM: There may be a little
 8 confusion, this is not the document, because
 9 there are additions to this document in the
 10 documents in his files.
 11 MR. PETERSON: Maybe you can
 12 elucidate. I'm not trying to be difficult.
 13 We got document production in the form of
 14 one big continuous set of documents, nothing
 15 was separated into --
 16 MR. STURM: My perception is that the
 17 Bates number and the confidentiality status
 18 of it is listed on the bottom, which is not
 19 in the original document.
 20 MR. PETERSON: All right.
 21 MR. STURM: That's my assumption
 22 because it is not what I have.
 23 MR. PETERSON: Fair enough.
 24 Q. Other than the confidential and Times
 25 Square Bates number, is this a document produced

7 (Pages 25 to 28)

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1 D. O'Sullivan
 2 and prepared by Navillus?
 3 A. Sorry.
 4 MR. STURM: Can we consult, or --
 5 MR. PETERSON: I would rather have the
 6 witness answer.
 7 A. Okay, it was produced by an employee
 8 working with Navillus.
 9 Q. Who is that?
 10 A. At the time, Tony Del Greco.
 11 Q. Tony Del Greco?
 12 A. Yes.
 13 Q. He was a --
 14 A. Sorry, I should say I think it is Tony
 15 Del Greco.
 16 Q. Tony Del Greco at the time was being
 17 paid by Navillus, though; is that right?
 18 A. Tony Del Greco at the time was
 19 employed by Navillus, yes.
 20 Q. When did Tony Del Greco cease being
 21 employed by Navillus and become employed by Times
 22 Square?
 23 A. Don't know, sometime in 2006.
 24 Q. Do you know why he ceased being
 25 employed by Navillus and started being employed by

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1 D. O'Sullivan
 2 Times Square?
 3 A. Yes.
 4 Q. Why?
 5 A. Because he was the most knowledgeable
 6 person at the 785 Eighth Avenue project.
 7 Q. How did he come -- sorry?
 8 A. Kevin and I decided to get into
 9 development, we looked at many projects, this
 10 being one of them. Tony prepared the conceptual
 11 estimates for us.
 12 Q. Us being Navillus?
 13 A. No, us being Kevin and I.
 14 Q. But at the time he prepared them, he
 15 was an Navillus employee; right?
 16 A. At the time he prepared them, he was a
 17 Navillus employee. He may have been reimbursed
 18 for these conceptual estimates he put together for
 19 Kevin and I.
 20 Q. I just want to make sure I understand
 21 that he went to work for Times Square because of
 22 the work that he did to prepare these conceptual
 23 estimates; is that right?
 24 A. Correct.
 25 Q. That meant he was the person that had

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1 D. O'Sullivan
 2 the most thorough understanding of the elements of
 3 the building project, is that a fair way to say it
 4 or would you say it a different way?
 5 A. Putting the conceptual estimate
 6 together for the developer.
 7 Q. So tell us what a conceptual estimate
 8 is and what its function is?
 9 A. In a nutshell, how much profit you
 10 make at the end of the day.
 11 Q. If I look at this document, it appears
 12 that this contains detailed estimates of the cost
 13 of various construction work to be performed at
 14 the site, not just concrete, but essentially all
 15 of the construction work at the site; is that
 16 right?
 17 A. Yes.
 18 Q. How long had Tony Del Greco been
 19 working at Navillus at this time? When I say this
 20 time, I mean February of 2006, just because that's
 21 the date on the document?
 22 A. Can't be sure, he started in
 23 approximately February, 2004 or 2005, I'm not sure
 24 which year.
 25 Q. Did you hire him?

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1 D. O'Sullivan
 2 A. Yes.
 3 Q. Why did you hire him?
 4 A. I hired him to run our agency work
 5 when it came to general contracting, in New
 6 Jersey.
 7 Q. Did there come a time when you
 8 concluded that Tony would be useful to your
 9 development work as opposed to contracting work?
 10 A. Yes.
 11 Q. When about, when approximately was
 12 that?
 13 A. Sometime in 2006, I would say.
 14 Q. Did you speak with Kevin about that,
 15 when I say that, I mean your conclusion that Tony
 16 would be useful in the development end of the
 17 business?
 18 A. Yes.
 19 Q. I know this is a broad question, but
 20 can you say what you and Kevin discussed with
 21 respect to Tony's involvement in the development
 22 work?
 23 A. He had the most knowledge and the best
 24 capability of dealing with banks, and zoning
 25 requirements, dealing with the 401-K attorneys,

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1 D. O'Sullivan
 2 A. Correct.
 3 Q. Do you know why he went from Navillus
 4 to Times Square.
 5 A. I don't know.
 6 Q. Does Navillus have a safety inspector
 7 at the site now?
 8 A. Yes.
 9 Q. Who is that?
 10 A. Patty, Patrick Corcoran.
 11 Q. When did he start, approximately, if
 12 you know when he started as safety inspector for
 13 Navillus, at the site?
 14 A. I guess again approximately March,
 15 April, 2007, generally when the superstructure
 16 started.
 17 Q. What part of the project did Wayne
 18 Murphy cover, if you will, for Navillus?
 19 A. Concrete work, foundation work.
 20 Q. Wayne was a Local 79 member; correct?
 21 A. When he worked for us in the past, he
 22 was a Local 79 member.
 23 Q. Do you know why Wayne went from
 24 Navillus to Times Square?
 25 A. I don't know.

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1 D. O'Sullivan
 2 Q. Were you involved in the decision
 3 pursuant to which Wayne went from Navillus to
 4 Times Square?
 5 A. I can't remember, to be honest.
 6 Q. Do you remember if your brother called
 7 and asked if Wayne could come to work for Times
 8 Square?
 9 A. No.
 10 Q. Do you know if Times Square had its
 11 own safety inspector before Wayne went to Times
 12 Square?
 13 A. I don't think so, on that particular
 14 time, I don't know about any other times.
 15 Q. I was talking about that particular
 16 time, thank you.
 17 Is that unusual for a general
 18 contractor not to have a safety inspector at a job
 19 site?
 20 A. No. We are performing a project at
 21 Jansen Housing at the moment, site safety guy is
 22 our employee, is an employee of ours, but the
 23 general contractor doesn't have one.
 24 Q. You say ours, you are talking about
 25 Navillus?

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1 D. O'Sullivan
 2 A. Navillus.
 3 Q. Did Times Square request Navillus
 4 provide a site safety inspector at Eighth Avenue?
 5 A. Yes.
 6 Q. Do you know when that request came in?
 7 A. We commenced the foundation work.
 8 Q. About when was that?
 9 A. Fall of 2006.
 10 Q. That was Wayne Murphy, he was the site
 11 inspector for Navillus at that time?
 12 A. Yes.
 13 Q. Let me ask you about Fergal Conefrey,
 14 when did he start working for Navillus?
 15 A. Sometime during 2006.
 16 Q. Started working for Navillus?
 17 A. I'm sorry, Times Square. Navillus, I
 18 think '98, maybe, '97, '98.
 19 Q. What was his job at Navillus?
 20 A. Project manager, in the stone and tile
 21 division, when I say division, section maybe is a
 22 better word.
 23 Q. When did he go to work for Times
 24 Square?
 25 A. Sometime during 2006.

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1 D. O'Sullivan
 2 Q. What job did he have for Times Square?
 3 A. I don't know.
 4 Q. Was it a project manager?
 5 A. He is the project manager -- my guys
 6 deal with 785.
 7 Q. Were you involved in the decision
 8 pursuant to which Fergal went from Navillus to
 9 Times Square?
 10 A. Again, I don't remember.
 11 Q. Did you talk with your brother about
 12 Fergal going over to that company?
 13 A. Probably did, again, I don't remember,
 14 but I probably did.
 15 Q. Do you know why Fergal went from
 16 Navillus to Times Square?
 17 A. He was answerable to Kevin when he
 18 worked with Navillus, because he worked under the
 19 tile and stone section, which was Kevin's section,
 20 as opposed to me.
 21 Q. He was directly answerable?
 22 A. Tile and stone was getting quiet at
 23 the time, so that was our decision.
 24 Q. Was Kieran Power a Navillus employee?
 25 A. No.

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1 D. O'Sullivan
 2 between 785 Partners, LLC and Times Square
 3 Construction, Inc. dated as of March 3,
 4 2006.
 5 The signature page of this rider
 6 appears to be nine pages in, which -- excuse
 7 me, 10 pages in, which is Bates stamp number
 8 0119. Once again, the owner's signature is
 9 Jay Eisenstat, and then for contractor Times
 10 Square Construction, Inc., that's your
 11 signature; correct?
 12 A. Yes.
 13 Q. So is this, in fact, a rider to the
 14 general conditions to the contract between the
 15 owner of the property and Times Square
 16 Construction?
 17 A. This is the same date as the last
 18 document you had shown me.
 19 Q. Yes.
 20 A. Sorry, what was your question?
 21 Q. Is this, in fact, a rider to the
 22 general conditions of agreement between the owner
 23 of the Eighth Avenue property and Times Square
 24 Construction?
 25 A. You know, I can't be sure, because

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1 D. O'Sullivan
 2 Kevin would have asked me to sign this if he
 3 wasn't here.
 4 If I remember correctly, this has
 5 something to do with bank closing dates, issues
 6 like that, which if he wasn't here, he would have
 7 asked me to sign, because it would have had to be
 8 signed, so issues such as the bank, or applying
 9 for a condo plan, or something to that effect.
 10 Q. Are you saying that in order to file
 11 for the condo plan, the owner of the property had
 12 to show that it had hired a construction manager?
 13 A. I am not saying anything like that, it
 14 would be issues like that. Again, this general
 15 conditions I would never have read, or have never
 16 read.
 17 Q. But you did sign it?
 18 A. That is my signature, yes.
 19 Q. The next page is titled amendment
 20 number 1 between -- to agreement between owner and
 21 construction manager?
 22 MR. STURM: What page number?
 23 MR. PETERSON: Bates stamp number
 24 01120.
 25 MR. STURM: Previous document, not the

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1 D. O'Sullivan
 2 next one.
 3 MR. PETERSON: Next one.
 4 MR. STURM: Weren't you referring to
 5 1121 --
 6 MR. PETERSON: No, 1119 --
 7 Q. But by way of coming attractions,
 8 let's look at 1121, that is signed by you on
 9 behalf of Times Square Construction also; correct?
 10 A. Correct, again, same date.
 11 Q. March 3, 2006?
 12 A. This would have been a case where I
 13 would have been asked to go in and -- Kevin would
 14 have asked me to go in and sign these documents
 15 all in one day. So that we know the process of
 16 these things, these would have been reviewed by
 17 Kevin's attorney, and he would have okayed, if he
 18 wasn't here, he would have okayed me, he would
 19 have asked me to go in and sign these, in order to
 20 again, let a bank closing proceed or something to
 21 that effect.
 22 Q. Well, you are not saying you lacked
 23 the authority to bind Times Square Construction,
 24 are you?
 25 A. What I'm saying is I would not have

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1 D. O'Sullivan
 2 read, or I haven't read any of these documents.
 3 Q. But your signature on these documents
 4 was binding on behalf of Times Square; correct?
 5 A. Correct.
 6 Q. Let's go back to -- I mean let's talk
 7 about this period, March of 2006. At that time,
 8 Kevin was still an officer of Navillus; correct?
 9 A. I don't know.
 10 Q. I'd like to show you a document marked
 11 as Donal O'Sullivan 4.
 12 (D. O'Sullivan Exhibit 4, document
 13 headed minutes of the meeting of the board
 14 of directors of Navillus Tile, Inc., marked
 15 for identification, as of this date.)
 16 Q. This document is headed minutes of the
 17 meeting of the board of directors of Navillus
 18 Tile, Inc.
 19 The third paragraph on the first page
 20 says resolved that the corporation accepts the
 21 resignation of Kevin O'Sullivan as executive vice
 22 president, secretary and treasurer and that such
 23 resignation would be effective as of September 5,
 24 2006.
 25 Does that refresh your recollection of

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1 D. O'Sullivan
 2 when Kevin resigned as an officer of Navillus?
 3 A. Yes.
 4 Q. Is that your signature at the bottom
 5 of the first page?
 6 A. Yes.
 7 Q. If we go to the second page, at the
 8 top it says approved by the president, that's your
 9 signature also?
 10 A. Yes.
 11 Q. Why did Kevin resign as an officer of
 12 Navillus Tile?
 13 A. You'd have to ask him that.
 14 Q. What did he say to you?
 15 A. I don't remember.
 16 Q. What did you say to him when he told
 17 you that he was going to resign?
 18 A. I don't remember, I really don't
 19 remember.
 20 Q. So there are two officers of a company
 21 that you and your brother have co-owned, for many
 22 years, and one day he just shows up and resigns?
 23 I mean can you tell us a little more about the
 24 circumstances under which he resigned?
 25 A. I think earlier in my testimony I told

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1 D. O'Sullivan
 2 you that we had talked about development and that
 3 he was going to run the development side of -- he
 4 was going to run the development for both him and
 5 I. It is not like he showed up and said I'm going
 6 to resign.
 7 Q. But he didn't actually resign until
 8 September, 2006?
 9 A. No.
 10 Q. Which was sometime after you had
 11 already started development?
 12 A. It would -- have been an understanding
 13 that if he was going to run the development, for
 14 both him and I, that was what he was going to be
 15 doing, and it would have been an understanding
 16 that he was going to resign from Navillus.
 17 As I said earlier, I ran -- everybody
 18 was answerable to me other than Kevin, I ran most
 19 of Navillus other than the stone and tile
 20 division.
 21 So when he was going to run the
 22 development for him and I, it was just an
 23 understanding that he was going to resign, there
 24 was no big mystery about it. I was always doing
 25 the Navillus side of the work for the most part,

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1 D. O'Sullivan
 2 stone and tile was a very small portion of it, and
 3 then he was going on to run the development side,
 4 run the development for both him and I.
 5 Q. Was there anything in particular
 6 happening in September of 2006 that caused him to
 7 resign then?
 8 A. No, the truth be told, previous six
 9 months or year was just too busy to sit down and
 10 do it, that's the only reason it went out to
 11 September, 2006.
 12 Q. By this point, a lot of the work at
 13 Eighth Avenue had already been subcontracted?
 14 When I say this point I mean September, 2006.
 15 A. I don't know. I know that Kevin was
 16 well tied up with that project, months prior to
 17 September, 2006. My involvement with that was the
 18 conceptual estimate at the start, or -- pretty
 19 much covers it. When it came down to subs and all
 20 that type of stuff, I was -- I had nothing to do
 21 with that.
 22 Q. In 2006, did Kevin draw a salary from
 23 Navillus?
 24 A. I'm sure he did.
 25 Q. Did you draw a salary from Navillus?

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1 D. O'Sullivan
 2 A. For a portion of 2006.
 3 Q. What portion of 2006 did you draw a
 4 salary from Navillus?
 5 A. Sorry, Kevin would have drawn a salary
 6 for a portion of the 2006.
 7 Q. What portion?
 8 A. Again, I don't know.
 9 Q. Was it 11 months, or --
 10 A. I have no idea, I have to -- I really
 11 don't know.
 12 Q. Does Navillus maintain payroll records
 13 that you could review to determine --
 14 A. Sure.
 15 RQ MR. PETERSON: I have already
 16 requested payroll records, and I'd like to
 17 specify or repeat my request for a
 18 description of who was working for Navillus
 19 at what point in 2006, as reflected in the
 20 payroll records. So I have requested those
 21 payroll records.
 22 Q. Would those payroll records also tell
 23 us when the other former Navillus employees went
 24 to Times Square, the people you were talking about
 25 earlier?

13 (Pages 49 to 52)

<p style="text-align: right;">Page 61</p> <p>1 D. O'Sullivan</p> <p>2 asked.</p> <p>3 MR. PETERSON: They are both June 30,</p> <p>4 2007.</p> <p>5 Q. Right?</p> <p>6 A. There are two invoices; is that right?</p> <p>7 Q. Right, sorry, I was asking about the</p> <p>8 one for second quarter and one for the third</p> <p>9 quarter. So you don't know if these are payments</p> <p>10 for second and third quarter?</p> <p>11 A. Other than making -- it is two \$9,000,</p> <p>12 bills and two \$9,000 checks.</p> <p>13 Q. But you don't have knowledge other</p> <p>14 than these documents?</p> <p>15 A. No, I would have to see our records in</p> <p>16 the office.</p> <p>17 RQ MR. PETERSON: If you could let me</p> <p>18 know if in fact we have this wrong, it</p> <p>19 appears the second and third quarter of '06</p> <p>20 were paid in June of '07 and the fourth</p> <p>21 quarter of '06 was paid in September, '07.</p> <p>22 If in checking records that appears to be</p> <p>23 inaccurate, please let me know.</p> <p>24 MR. STURM: Sure.</p> <p>25 THE WITNESS: It wouldn't be unusual</p>	<p style="text-align: right;">Page 63</p> <p>1 D. O'Sullivan</p> <p>2 A. It wasn't a contractor, I think it was</p> <p>3 an owner. Actually I'm not that sure. It was 121</p> <p>4 Reade Street was the address.</p> <p>5 Q. Between then and 785 Eighth Avenue has</p> <p>6 Navillus served as a paymaster for anyone else?</p> <p>7 A. I really don't know.</p> <p>8 Q. Did you have any meetings or</p> <p>9 conversations with Nick Albanese between that job</p> <p>10 on Reade Street, and the summer of 2007?</p> <p>11 A. No. I didn't have any conversations</p> <p>12 with him.</p> <p>13 Q. In summer of 2007 either?</p> <p>14 A. No.</p> <p>15 Q. But Navillus did serve as a paymaster</p> <p>16 for Nick Albanese on the Eighth Avenue job at some</p> <p>17 point this year; correct?</p> <p>18 A. For a week or so.</p> <p>19 Q. How did that come about?</p> <p>20 A. Times Square requested of Navillus to</p> <p>21 put on a -- somebody from 79 as -- asked us to be</p> <p>22 paymaster.</p> <p>23 Q. Who at Times Square made this request?</p> <p>24 A. I believe it was Fergal, and it</p> <p>25 wouldn't be to me.</p>
<p style="text-align: right;">Page 62</p> <p>1 D. O'Sullivan</p> <p>2 that a bill would be paid like that.</p> <p>3 MS. PITTAWAY: I'll go ahead and ask</p> <p>4 my client, because I'm sure we have our own</p> <p>5 records.</p> <p>6 MR. PETERSON: I would be surprised if</p> <p>7 it were anything other than what we think it</p> <p>8 is, but...</p> <p>9 Q. Do you know a man named Nick Albanese?</p> <p>10 A. Met him about ten years ago.</p> <p>11 Q. Okay, in what circumstances did you</p> <p>12 meet Nick ten years ago?</p> <p>13 A. He asked Navillus to be a payroll</p> <p>14 master on a job downtown. He was a business agent</p> <p>15 at the time.</p> <p>16 Q. For Local 79?</p> <p>17 A. Sorry, he might have been a business</p> <p>18 agent or an organizer, I'm not so sure, but it was</p> <p>19 1996 or '7, there were people asking me if we</p> <p>20 could put an individual from 79 on as a payroll</p> <p>21 master on a job.</p> <p>22 Q. And did you?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know who the other contractor</p> <p>25 was?</p>	<p style="text-align: right;">Page 64</p> <p>1 D. O'Sullivan</p> <p>2 Q. Do you know who it was to?</p> <p>3 A. Gabriel McCauley.</p> <p>4 Q. Who is Gabriel McCauley?</p> <p>5 A. My general superintendent.</p> <p>6 Q. And he has responsibility for the</p> <p>7 Eighth Avenue job?</p> <p>8 A. He has responsibility for all my</p> <p>9 labor.</p> <p>10 Q. Do you know if anyone else at Navillus</p> <p>11 was communicated with, either by E-mail or phone,</p> <p>12 or in person, about the paymaster issue, about</p> <p>13 Navillus becoming a paymaster?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you know if anyone other than</p> <p>16 Fergal at Times Square approached Navillus about</p> <p>17 becoming a paymaster?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know why Times Square asked</p> <p>20 Navillus to be a paymaster on the job?</p> <p>21 A. As per Fergal, Local 79 personnel</p> <p>22 continuously calling him to bring someone on.</p> <p>23 Q. Would this be a laborer to do general</p> <p>24 conditions work?</p> <p>25 A. Again, whatever laborers do for</p>

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1 D. O'Sullivan
 2 general contractors, I don't know what they do.
 3 Q. Navillus has a collective bargaining
 4 agreement with Local 79?
 5 A. Right.
 6 Q. Approximately when was this, that
 7 Navillus became a paymaster?
 8 A. I don't know, I think I was in Ireland
 9 at the time but that would have been the summer of
 10 2006 sometime, '7.
 11 Q. Did Navillus employ Local 79 members
 12 at the job site at that time?
 13 A. Can't answer, don't know.
 14 Q. Do you know what phase Navillus's work
 15 was in at that time at the job site?
 16 A. Superstructure work.
 17 Q. Do you know if in doing the
 18 superstructure work you employed 79 laborers?
 19 A. No, you do not.
 20 Q. So would a fair summary be that you
 21 don't know for a fact whether Navillus was
 22 employing other Local 79 members at that time, but
 23 the chances are it wasn't, because it was doing
 24 superstructure work; is that a fair statement?
 25 A. Correct.

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1 D. O'Sullivan
 2 Q. Is there a reason that Navillus did
 3 not directly employ a laborer instead of serving
 4 as paymaster?
 5 A. Wasn't our responsibility.
 6 Q. Responsibility in what sense?
 7 A. It wasn't our trade, we were doing
 8 superstructure concrete.
 9 Q. Are you aware that Times Square
 10 requested that the laborer from Local 79 have
 11 safety certification?
 12 A. I don't know. I heard talk about it,
 13 but... Fergal had sent the request to be on
 14 payroll master, someone from Local 79 office by
 15 the name of Tony Vita -- a better word harassed my
 16 superintendent, Gabriel. When I say harassed, I
 17 mean called every 15 minutes, to try and get him
 18 to force Times Square do put a 79 person on.
 19 Gabriel said to me it came to the point where he
 20 couldn't take another call from 79, which meant he
 21 couldn't even talk to the other business agents
 22 because he couldn't answer the phone, because of
 23 this harassment from Tony Vita.
 24 He eventually did talk to -- and again
 25 some person from Local 79, and may have said they

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1 D. O'Sullivan
 2 had a safety license, it may help Times Square to
 3 put someone on. This is what I know. Come to
 4 think of it, Tony Vita called me quite a few
 5 times, I don't take his calls at all, he left
 6 several calls and messages, referring to Times
 7 Square.
 8 Q. This was before the paymaster
 9 arrangement?
 10 A. I guess, yes.
 11 Q. What does it mean to be a paymaster?
 12 A. What does it legally mean, or what do
 13 I think it means?
 14 Q. What you think it means.
 15 A. What I think it means, it is a way for
 16 Local 79 to get an employee hired by a nonunion
 17 contractor on a job.
 18 Q. Did Gabriel ask you whether it was
 19 okay to -- for Navillus to serve as paymaster?
 20 A. He probably did.
 21 Q. And you approved it?
 22 A. I probably would have.
 23 Q. Why did you say yes?
 24 A. Because every day we are not at work
 25 at a concrete job it can cost us up to \$50,000 a

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1 D. O'Sullivan
 2 day, and 79 had threatened to put a picket on the
 3 job. My guys, concrete guys would not cross
 4 picket lines, so rather than I lose 50,000 or two
 5 days or three days, which adds up very, very
 6 quickly, Gabriel would have made or I would have
 7 made the decision, yes, if that's what they want
 8 to do, for us to keep the peace, we will do that.
 9 Q. Who would have lost 50,000 a day?
 10 A. Navillus, the concrete --
 11 Q. But Navillus's arrangement was cost
 12 plus.
 13 A. It is cost plus, normal production,
 14 but if we were just like any other job, if any job
 15 shuts down, we are expected to go to work, and
 16 they don't classify you and your pickets as being
 17 reason to shut down, by any contractor in the
 18 city.
 19 Q. Did you speak with your brother about
 20 Local 79?
 21 A. I don't know, I do know that Gabriel
 22 continually told Tony Vita deal with Times Square,
 23 nothing to do with us, Navillus had always had a
 24 good relationship, we paid half million dollars in
 25 benefits Local 79 every month -- go after Times

17 (Pages 65 to 68)

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1 D. O'Sullivan
2 said to me -- you would think they would -- you
3 would think they would have had, you would think
4 they would have sent someone that would work, but
5 every day I go in there to visit the concrete job
6 I see this individual standing at the gates doing
7 nothing. No wonder Times Square are annoyed with
8 him.
9 Q. So what is it that you did then once
10 Gabriel said let's get out of this? What is it?
11 When I say you, I'm speaking about Navillus.
12 A. Navillus would have contacted Times
13 Square and said we are done with being payroll
14 master, find somebody else.
15 Q. Do you know who at Navillus contacted
16 Times Square?
17 A. Again, I don't.
18 Q. So you, by the same token, you don't
19 know who at Times Square was talked to by
20 Navillus?
21 A. No, but I would presume it would be
22 Gabriel and Fergal, as they were dealing with the
23 issues.
24 Q. Did Navillus pay Nick Albanese?
25 A. I think we might have paid him for a

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1 D. O'Sullivan
2 week or two, I'm not too sure.
3 Q. How did Navillus determine how many
4 hours to pay him?
5 A. I don't know.
6 Q. Would Gabriel know?
7 A. Possibly, I don't know.
8 Q. Do you know if Gabriel kept records of
9 when Nick Albanese worked?
10 A. No.
11 Q. That would have been Times Square's
12 job to determine how many hours Nick Albanese
13 worked?
14 A. I guess.
15 Q. Do you know what happened after
16 Navillus notified Times Square it didn't want to
17 be paymaster any more?
18 A. Directly after, I don't know, I think
19 a picket was put up sometime thereafter.
20 Q. Do you know if another paymaster
21 was -- another company was asked to be paymaster?
22 A. I have no idea.
23 Q. You mentioned that Gabriel said it
24 looked like Nick Albanese was not doing any work;
25 right?

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1 D. O'Sullivan
2 A. He just -- he mentioned in
3 conversation to me that he goes to the job every
4 day looking -- my general superintendent watching
5 my concrete crew, and I think he was upset that he
6 got tied into something where he -- where we
7 accepted Navillus as being a paymaster of --
8 Q. Who got upset?
9 A. Gabriel, that 79 would send out such
10 an individual, in order to keep the peace.
11 Q. Who was on the hook for the money,
12 though, let's say this is accurate, Nick Albanese
13 showed up and didn't perform any productive work.
14 Whose pocket did the money that paid Albanese come
15 out of?
16 A. We -- I think we paid him the first
17 week, whatever Times Square would have -- Times
18 Square would have told -- I'm not too sure on that
19 one, but we would have paid for the first week,
20 and we would bill Times Square.
21 Q. So anything that Navillus paid to Nick
22 Albanese, you would simply bill Times Square for?
23 A. Correct.
24 Q. Is that in fact what happened here?
25 A. I have no idea.

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1 D. O'Sullivan
2 Q. Do you know if Times Square actually
3 paid Navillus back for whatever it paid for Nick
4 Albanese?
5 A. I don't know. I'd be surprised if
6 they did.
7 Q. Why would you be surprised?
8 A. Because I think they hired someone to
9 do work which they didn't get any production, they
10 got -- someone that didn't work.
11 Q. But you didn't, Navillus didn't hire
12 him; right?
13 A. We were the payroll master, we were
14 billing Times Square.
15 Q. Okay. Navillus did not select Nick
16 Albanese, though; correct?
17 A. No.
18 Q. Times Square selected Nick Albanese?
19 A. I have no idea where he came from.
20 Q. Who supervised Nick Albanese?
21 A. I don't know.
22 Q. Navillus didn't supervise Nick
23 Albanese?
24 A. I don't believe so.
25 Q. Navillus didn't instruct Nick Albanese